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L 264265

IN THE COURT OF Smt. Deepa Gupta, Arbitrator
IN DOMAIN NAME DISPUTE RESOLUTION POLICY (INDRP)
&

National Internet EXCHANGE OF India (N I X I)
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New Delhi Dated June 6, 2010

PURATOS N.V.,
Industrialaan 25, B-1702
Groot- Bijgaeden, Belgium

Complainant

VS

KO KO TE, CHINA
Matoula 1187 House 28/601,

Shanghai 200128, China

Respondent

1. The parties:

Complainant is PURATOS N.V., Industrialaan 25, B-1702 Groot- Bijgaeden, Belgium

Respondent is KO KO TE, CHINA, Matoula 1187 House 28/601, Shanghai 200128, China

2. The Dispute :

The domain name at issue is <puratos.in> (the domain name)

The registrar NIXI is at Incube Business Centre, 38 Nehru Place, New Delhi.



3. Brief Background :

This Arbitral proceeding commenced in accordance with the .IN Dispute Resolution Policy (INRDP) and rules frame there under.

Complainant submitted his complaint in the registry of NIXI on and the respondent did not submit any reply.

Ms. Deepa Gupta has been appointed as Sole Arbitrator in this matter

It is alleged in the complaint that the complainant has registered this trademark in India under class 30 in respect of goods like tea, coffee, sugar, rice, tapioca, sago, artificial coffee, flour, etc. and in class 1 i.r.o. chemical substances preserving foods stuffs and improving quality of Industrial and homemade baking products and also regd. in several other countries and is producing products under this name for several years, it is also revealed from the filed documents that the complainant is a global leader in the business of producing semi finished products for bakeries, patisseries, chocolates.

Respondent has not responded at all.

4. Parties contentions:

Complainant submits domain name <www.puratos.in> is registered in India by the Respondent with the Registrars, Directi Internet Solutions Pvt. Ltd.

Puratos N.V. is a company incorporated Belgium, registered office at Industrialaan 25, B-1702 Groot - Bijgaarden, Belgium global leader in the field of ingredients for bakeries, patisseries and chocolates & has been producing semi finished products for bakeries, patisseries and chocolates for several years. Complainant a subsidiary in India, 'Puratos Food Ingredients India Pvt. Ltd.',

That trademark **PURATOS** registered by the Complainant in India as well as several other countries wrongfully used by the Respondent. Trademark **PURATOS** is registered under class 30 in respect of goods such as coffee, tea, sugar, rice, tapioca, sago, artificial coffee, flour, preparations made from cereal, baking powder, salt, mustard, vinegar, sauces (condiment), spices, preparations made from cereals for food and human consumption, bread, biscuits etc & India under class 1 in respect of chemical substances preserving food stuffs and improving the quality of industrial and home made baking products.

That Complainant be granted the reliefs sought.



FACTUAL BACKGROUND:

The Complainant, submitted www.puratos.com is the main website and www.puratosindia.com is the registered web site in India, domain names www.puratos.co.in, www.puratos.org.in and www.puratos.net.in are registered with .IN Registry in India. Respondent has wrongfully registered the domain name <www.puratos.in> which is identical and confusingly similar to the trademark of the Complainant. Respondent does not have any right or legitimate interest in respect of the domain name which is the subject of the present complaint, domain name <www.puratos.in> is registered by the Respondent in bad faith with a view to deriving unlawful gains. Complainant further submits that registration of domain name <www.puratos.in> in the name of the Respondent deserves to be cancelled on the following amongst other grounds.

Complainant has also registered number of applications various parts of the world for its trademark **PURATOS** and also owns several domain names in different countries such as

- i) Belgium : www.puratos.be
- ii) Canada : www.puratos.ca
- iii) France : www.puratos.fr
- iv) Argentina : www.puratos.com.ar
- v) Austria : www.puratos.com.de
- vi) India : www.puratosindia.com
www.puratos.co.in,
www.puratos.org.in
www.puratos.net.in. etc.

Complainant states that in view of its world wide publicity **PURATOS** mark and the distinctive nature of its business, the adoption of the name by the Respondent cannot be considered as a coincidence. The Complainant states that copying the mark is a dishonest act by the Respondent as it seeks to usurp the goodwill attached to the Complainant's business with a view to deriving unlawful monetary gains. Complainant states that the use of an identical domain name by the Respondent will mislead, divert consumers and further lead to tarnishing the Complainant's reputation.

Complaint submits that he has not licensed or otherwise permitted the Respondent to use the mark **PURATOS** at any point of time.

The Complainant believes that the intention of the Respondent in registering the domain name < www.puratos.in > is to sell it to a third party with a view to deriving unlawful gains and thereby causing irreparable loss and damage to the Complainant.

The Complainant has acquired considerable goodwill and reputation in the Trade Mark **PURATOS** all over the world. The web site created by the Respondent deals in providing sponsored links and listings to several organizations and other websites serving as a listing / advertisement portal.



Mark **PURATOS** is a coined word and is a distinctive mark the Respondent is not carrying on business activity similar to that of the Complainant but has registered the same to merely resell it to a third party.

Complainant certifies that the information contained in this Complaint is to the best of Complainant's knowledge complete and accurate, that this Complaint is not being presented for any improper purpose, such as to harass the Respondent etc.

Complainant further declare that the matter regarding which this complaint has been made is not pending before any Court of law or any other authority or any other Bench of the Tribunal.

Further indications of bad faith:

The following circumstances additionally indicate bad faith of the Respondent:

Registration of a domain name that is identical to a famous trademark without authorization is in itself evidence of bad faith.

Lack of any conceivable, plausible actual or contemplated use ever since the hijacking of the domain name has evidence of very early bad faith under INDRP for good reason. A Respondent lacking conceivable interests is acting in bad faith.

Failure to Respond is considered an indication of bad faith. Respondent failed to answer to the letter of submission from the Arbitrator.

Complainant alleges that the respondent has registered www.puratos.in which is visually conceptually and confusingly similar to his name and also phonetically similar and that the respondent has done it with a malafide intention well knowing the Worldwide fame and Goodwill of the name Puratos and to en-cash upon it commercially and registered the same as a registrant with an intention to prevent the real owner of the trademark or service mark from reflecting the mark in a corresponding domain name, and is a bad faith registration plus bad use of the domain name. The Respondent has registered the domain name www.purataos.in with the intention to sell it to others for profits & misleading the public.

RELIEFS SOUGHT

Pass an order restraining the Respondent, their agents, representatives, servants, employees, etc. from having access to, using, transferring, selling or otherwise disposing in any manner whatsoever the domain name <www.puratos.in>;

To pass an award transferring the domain name <www.puratos.in> to the Complainant;

To pass an interim order in favour of the Complainant in terms of prayer (a) above pending the final hearing and disposal of this complaint;

Plead to award the cost of these proceedings to the Complainant in terms of section 31 of the Arbitration and Conciliation Act, 1996;

Respondent: Not responded to the Complaint



Opinion:

I. Issue:

A) To obtain relief under the dispute resolution policy and the rules framed by the .IN registry the complainant is bound to prove each of the following :

1. Manner in the domain name in question is identical or confusingly similar to a trademark or service mark in mark in which the complainant has rights.
2. Why the respondent should be considered as having no rights or legitimate interests in respect of the domain name that is the subject of the complaint.
3. Why the domain name in question should be considered as having been registered and being used in bad faith.

Complainant's principal contention as enumerated in Para 4 and on the basis of perusal of the records submitted by Complainant with the complaint .This tribunal is of confirmed opinion that the Complainant has been using the name Puratos since last several years in one form or the other and has made sincere efforts to promote the brand name Puratos by consuming various resources available at his end and word Puratos has certainly acquired a popular Brand name in the process.

On the basis of the records submitted by the complainant it's proved that the domain name puratos.in is related to the business of Complainant, is being used for purpose and related to his work.

It is confirmed that Complainant is user of name Puratos & operates worldwide.

The allegation made by the Complainant that the traffic of Complainant will be diverted to the Respondents site is correct and similar web names lead to confusion among web surfers cannot be denied.

Furthermore, if a trademark is incorporated in its entirety in a domain name, it is sufficient to establish that said name is identical or confusingly similar to Complainant's registered mark.

It cannot be overlooked that whenever a domain name registration is sought ample professional efforts need to be made to make sure that there is no pre existence of same or similar domain names on the world wide web so as to avoid any intentional or unintentional imbroglia or illegality of its operation and to ensure that no illegalities are committed.

The respondent does not have honorable intentions and has flouted the legal requirements and rules of registration of getting a Domain name and its registration and has not bothered to do the verification of pre existence of the domain name wishing to be registered or understanding whether he has rights to register such a name or not. puratosindia.com and similar domain names were legally registered at the various registries of internet by the Complainant before the respondent started the process of registration, and were legitimately using the name for business purposes profusely empowers them with the First right to the domain name puratos.in and therefore any rights of the Respondent in this regard stand defeated in favor of Complainant.



This tribunal holds that such misuse of the names should be checked in most efficient manner the complainant has tried to prove his good faith and right on the domain name in question should be considered as having been registered and being used in bad faith by the respondent.

Complainant has amply demonstrated that he is in the business of manufacturing, selling, distributing, of products under the brand of Puratos presently.

The tribunal is of confirmed opinion that the domain name trade name and trade are factually and correctly conjoint to each other and is proof of the same of widespread recognition of the products and services provided by the Complainant make this complaint a plausible case of action.

II. Domain name hijacking

This is establish rule that if the tribunal finds that the complaint was brought in good faith, for example in an attempt at forfeiting domain name hijacking or was brought primarily to rightly support the true domain name holder , the tribunal shall declare that the compliant was brought in good faith and constitute true use of administrative proceedings.

As enumerated in para 4 the Complainant asked for finding of bad faith, under this principle. In support of this prayer the Complainant cites the Respondent's failure to fully disclose the facts related to allegation against the respondent. Further, in support of this the Complainant submitted documents marked as Annexures which amply demonstrate and prove beyond any doubt that the complainant filed this complaint with no ulterior motive. Complainant's complaint is un colourable and confirms beyond doubt the mind of tribunal that the present complaint is filed with no ulterior motive. Therefore, I am bound to conclude with the certainty that the present complaint by the complainant is an effort to save the disputed domain name from misuse and intention to harass or abuse the process of Law.

III. Conclusion

On the basis of the available records produced by the parties their conduct in the proceedings and the establish law, this tribunal is of considered opinion that the complainant succeeded to prove all the necessary conditions. Further, this tribunal is bound to conclude with certainty that the present complaint by the complainant is an attempt by the complainant to save the domain name of complainant from hijacking by the respondent and in good faith with no intention to harass the respondent or abuse process of law and the name puratos.in be and is hereby transferred to Complainant with immediate effect.

This tribunal also directs the Respondent to pay an amount of Rs 10,000/- to the Complainant for costs and damages undergone by the Complainant and another Rs 40,000/- to NIXI for cyber squatting and as cost of this proceedings for burdening the administration to full fill his dirty ulterior motives. In the facts and circumstances of this case this tribunal further directs the registry of NIXI to take adequate precaution in entertaining such complaints and send a copy of this decision to the Hon'ble High Court of Delhi at New Delhi to take further actions against the miscreants as this tribunal cannot go beyond its jurisdiction.

Given under my hand and seal on this day of **6 day of June 2010.**


Deepa Gupta
Arbitrator

